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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,037	09/26/2001	Jerry A. Whatley	BRKS-25,885	9904
25883	7590	06/02/2005	EXAMINER	
HOWISON & ARNOTT, L.L.P. P.O. BOX 741715 DALLAS, TX 75374-1715			KRAMER, JAMES A	
			ART UNIT	PAPER NUMBER
			3627	
DATE MAILED: 06/02/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/964,037

Applicant(s)

WHATLEY ET AL.

Examiner

James A. Kramer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Hughes.

Hughes teaches a video real estate information service. Hughes teaches an apparatus and method for providing an audio-visual presentation of a property supplied over a network (abstract). The audio-visual presentation of Hughes includes a floor plan of the property (column 2; lines 18-19). Hughes further teaches as feature of the system, the ability to manipulate data to show what the property would look like should alteration be made; clients who intend to paint walls, buy new furniture or add on a new wing to a property can see what the property would look like before committing themselves (i.e. at a time at which a buyer for the property has not yet been identified) (column 5; lines 1-7).

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes in view of Official Notice.

Hughes does not teach the purchase of a title search, nor the purchase of title insurance.

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Examiner notes that both a title search and title insurance are old and well known in the art of real estate in order to ensure the proper ownership of a property prior to sale.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the real estate information service apparatus and method of Hughes to include a title search and title insurance, as these are old and well known in the art, in order to ensure the proper ownership of the property prior to sale.

***Response to Arguments***

Applicant's arguments filed 3/10/05 have been fully considered but they are not persuasive.

Applicant asserts that Hughes fails to disclose obtaining a commitment for the purchase of an appraisal and in fact there is no mention of an appraisal. Examiner disagrees. Examiner asserts that a method of gathering and combining data regarding a property (column 2, lines 39-44) is an appraisal. Further, column 5, lines 8-25 discuss a preferred sequence for creating walkthroughs, by a real estate agent. Examiner notes that these are appraisals. Further, in order to perform these walkthroughs and create this data (an appraisal) an agent must have the a commitment from a owner, as no one would do this at random.

Applicant asserts that Hughes fails to teach a web page. Examiner notes that files containing video images and associated data available for playing via a network, represents web pages.

Applicant asserts that Hughes is a non-enabled reference. Specifically, Applicant asserts that following statement is not enabled;

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“The user may select during a sequence 54 particular rooms or other areas in the property from a floor-plan, and the interactive display responds by moving to the point in the presentation indicated by the user’s selection. An additional feature is the ability to manipulate during a sequence 55 the data to show what the property would look like should alterations be made; clients who intend to paint the walls, buy new furniture or add a new wing to a property can see what the property would look like before committing themselves.”

Applicant supports this position by saying that Hughes makes no attempt to discribe any means for manipulating the data to accomplish the result of showing what a property would look like should alterations be made. Further, Applicant asserts that it is unclear how computers from 1995 could accomplish this end.

Examiner disagrees.

First, the furniture of Hughes must be virtual furniture, as Hughes clearly states “before committing themselves”.

Second, manipulating the data, clearly includes user positionable. Additionally, the only way to show how a property would look is to allow a user to position the furniture.

Third, Examiner asserts that the bar for an enabled reference is whether the public was in possession of the claimed invention before the data of the invention. Such possession is effected if one of ordinary skill in the art could have combined the publication’s description of the invention with his [or her] own knowledge to make the claimed invention (MPEP 2121.01). Examiner notes that while the reference was filed in 1995, this is not relevant to the enablement of the reference. If the statements would have render the public in possession of the invention prior to the present invention’s filing, the reference is enabled. Examiner asserts at the very least Hughes meets this bar.

Finally, Examiner asserts that a reference is presumed to be operable and the burden is on the applicant to **provide facts** rebutting the presumption of operability (MPEP 2121). Examiner

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notes that the statements made by Applicant are far from facts, but merely blind assertions and/or opinions (e.g. "It is unclear how this could be accomplished using today's technology, let alone computers from 1995, most of which used Windows 3.1."; "It is very unlikely that software for actively altering three dimensional video data in a web-based environment did not exist when Hughes filed in 1995", "Enabling a user to download video and place virtual furniture within the video would like(ly) have been far beyond the ability of desktop computers in 1995"). As such, regardless of all other issues, Applicant has not fulfilled the burden of providing facts to overcome the presumption of operability.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Kramer whose telephone number is (571) 272 6783. The examiner can normally be reached on Monday - Friday (8AM - 5PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272 6777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James A. Kramer  
Examiner  
Art Unit 3627

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